

standing in the face of similar prosecutorial indecision.” 2022 WL 3700044 at *5.

Plaintiffs here assert a parallel RFRA claim. Notably, CMA brings the RFRA claim on behalf of its members, and although some ACPeds members are not religious, others are, so ACPeds joins the RFRA claim on behalf of its religious members. First Am. Compl. ECF No. 15 ¶ 425. Under the Fifth Circuit’s ruling, there is a live injury under the § 1557 gender identity mandate, and therefore doctors have standing to sue.

The Fifth Circuit dismissed the *Franciscan Alliance* plaintiffs’ APA claim because it “sought nothing more” than vacatur of 2016 Rule, specifically its definition encompassing gender identity discrimination (and termination of pregnancy). 2022 WL 3700044 at *4. Here, Plaintiffs’ APA claim is broader, also challenging HHS’s 2020 Rule to the extent Defendants interpret or apply it to prohibit gender identity discrimination by virtue of *Bostock*, and it challenges HHS’s May 2021 notice of enforcement. First Am. Compl. ECF No. 15 ¶¶ 347, 383, 391, 420, 424, 446, and 462. The *Franciscan Alliance* plaintiffs’ APA claim did not encompass post-2016 agency actions, although their RFRA claim did. As to the 2016 Rule, Plaintiffs here also challenge that rule’s “sex stereotyping” prohibition, which the Fifth Circuit held imposes a distinct gender identity mandate. *Id.* ¶ 51–52; *see* 2022 WL 3700044 at *2.

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